

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ISELA RIOS)	
	Claimant)	
VS.)	
)	
IBP, INC.)	Docket Nos. 220,720;
	Respondent)	222,401 & 227,881
	Self-Insured)	

ORDER

Claimant appeals from an award entered by Administrative Law Judge Pamela J. Fuller on December 20, 1999. Jeff K. Cooper was appointed Board Member Pro Tem to serve in place of Board Member Gary Korte who recused himself from this proceeding.

APPEARANCES

Stanley R. Ausemus of Emporia, Kansas, appeared on behalf of claimant. Bradley D. Thornton of Dakota City, Nebraska, appeared on behalf of respondent, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Administrative Law Judge awarded benefits for 10 percent permanent partial disability based on a functional impairment rating by Dr. George G. Flutter, the court-appointed independent medical examiner. Claimant is not seeking a work disability award because she is working at a comparable wage. On appeal, claimant contends the ALJ should have relied on the opinion and rating by Dr. Pedro A. Murati. The nature and extent of claimant's disability is the only issue on appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

This appeal involves three consolidated claims for repetitive trauma injury to claimant's shoulders, back, neck, arms, hands, hips, and legs. The Administrative Law Judge relied on the opinion of the court-appointed independent medical examination of Dr. Flutter and concluded

claimant has a 10 percent permanent partial general disability as a result of these injuries. The Appeals Board agrees with and adopts as its own the findings and conclusions stated in the Award.

On appeal, claimant argues the ALJ and the Board should rely on the opinion of Dr. Murati. Dr. Murati rated the impairment as 32 percent of the whole person. The Board disagrees. The record includes ratings by Dr. Gary M. Kramer, Dr. Michael J. Baughman, and Dr. Flutter. Dr. Kramer rated the impairment as 9 percent of the whole person based on loss of range of motion. Dr. Baughman rated the impairment as 4 percent of the whole person for the cervical disc disease with 50 percent of this preexisting. Dr. Flutter, the court-appointed independent medical examiner, gave a rating of 10 percent of the whole person for mild cervical disc disease, chronic rotator cuff tendinitis, and probably bilateral epicondylitis.

The Board acknowledges that claimant's testimony about her complaints suggests an impairment higher than the 10 percent awarded. But the record also contains two FCE studies, both inconclusive because of claimant's voluntary lack of participation. The initial FCE suggested symptom exaggeration and submaximal effort. Claimant suggests the ALJ has arbitrarily adopted the court-appointed IME. The Board agrees the court-appointed IME is not intended to be adopted blindly in all cases. On the other hand, the court-appointed IME is intended to provide an impartial reference. Dr. Murati's rating appears to accept at face value all of claimant's complaints. The record as a whole indicates it is not appropriate to do so. In this case, it appears appropriate to adopt the rating by Dr. Flutter as a balanced and impartial evaluation.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the award entered by Administrative Law Judge Pamela J. Fuller on December 20, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Bradley D. Thornton, Dakota City, NE
Pamela J. Fuller, Administrative Law Judge
Philip S. Harness, Director